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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SUR LA TABLE, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

OSVALDO PELAYES, et al.,

Real Parties in Interest.

E049124

(Super.Ct.No. CIVVS801695)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Steve Malone, Judge.

Petition granted in part, denied in part.

Kinkle, Rodiger and Spriggs, Scott B. Spriggs and Janine L. Highiet for Petitioner.

No appearance for Respondent.

Wagner & Pelayes, Tiffany W. Woods and Dennis E. Wagner for Real Parties in
Interest.

In this matter we have reviewed the petition and the opposition thereto, which we conclude adequately address the issues raised by the petition. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

Pretrial writ review of discovery orders is generally not available unless the order will result in violation of a privilege or constitutional right or unless an important issue of first impression is raised. (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 171-172.) Discovery orders are reviewed under the abuse of discretion standard, and where the petitioner seeks relief from a discovery order that may undermine a privilege, we review the trial court's order by way of extraordinary writ. (*Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1493.) A trial court abuses its discretion when it applies the wrong legal standard applicable to the issue at hand. (*Ibid.*; see also *Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1517 [abuse of discretion where trial court applied wrong standard on claim of clergy-penitent privilege, writ relief granted]; *Venture Law Group v. Superior Court* (2004) 118 Cal.App.4th 96, 102 [writ relief granted where discovery order erroneously ordered attorney to violate attorney-client privilege in answering deposition questions].)

In light of these governing stands, this court is concerned only with the part of the trial court's order relating to petitioner's claim of attorney-client privilege. At least one of petitioner's employees was questioned during her deposition about conversations she had with the company's chief financial officer prior to the deposition. The latter also

managed legal activities for the corporation and acted as counsel's legal liaison. Defense counsel talked to the chief financial officer about how to prepare for deposition and instructed her to relay that information to employees who were being deposed. The deponent employee was specifically asked about what aspects of preparation had been discussed during the conversation. Defense counsel properly raised an objection based on attorney-client privilege. Even though the attorney was not present, the discussion about legal strategy—including preparing a corporate employee witness for deposition—is most certainly within the attorney-client privilege. (*Zurich American Ins. Co. v. Superior Court*, *supra*, 155 Cal.App.4th at pp. 1495-1496.) The fact that the corporate officer was “coaching” the witness by relaying discussions with the attorney does not make the communications any less privileged—even though, as the trial court found, the communications were obviously relevant. To the extent that the trial court's ruling compelled petitioner's employee to respond to such inquiries, it was in error. Real party in interest is correct that not everything said during this conversation is protected, and the employee can be asked about her own personal knowledge of relevant issues such as packaging.

With respect to the order to compel documents and sanctions, the trial court's order does not require the disclosure of privileged material and we see no abuse of discretion.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of San Bernardino County to set aside its order compelling further deposition testimony and to

issue a new order denying the motion to compel in part. In all other respects, the petition for writ of mandate is denied.

Petitioner's request for clarification filed October 7, 2009, is moot in light of this opinion.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

Petitioner is to recover its costs.

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GAUT
Acting P. J.

We concur:

HOLLENHORST
J.

MILLER
J.